

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 631, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO FIREARMS; AMENDING CHAPTER 3, TITLE 66, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 66-356, IDAHO CODE, TO PROVIDE THAT COURTS SHALL MAKE A FINDING AS TO WHETHER CERTAIN FEDERAL LAW APPLIES TO PERSONS IN SPECIFIED CASES, TO PROVIDE FOR DISSEMINATION OF ORDERS, TO PROVIDE FOR PETITIONS FOR RELIEF AND TO REMOVE FIREARMS-RELATED DISABILITIES, TO PROVIDE FOR PARTICIPATION IN THE PROCEEDINGS BY THE DEPARTMENT OF HEALTH AND WELFARE AND THE PROSECUTING ATTORNEY, TO PROVIDE FOR CONSIDERATION OF CERTAIN EVIDENCE BY THE COURT, TO PROVIDE A STANDARD OF PROOF, TO PROVIDE FOR APPEAL, TO PROVIDE A LIMITATION REGARDING FILING PETITIONS FOR RELIEF, TO PROVIDE FOR DISSEMINATION OF ORDERS GRANTING PETITIONS FOR RELIEF; AND AMENDING SECTION 67-3003, IDAHO CODE, TO PROVIDE THAT THE BUREAU OF CRIMINAL IDENTIFICATION OF THE IDAHO STATE POLICE SHALL OBTAIN AND TRANSMIT SPECIFIED INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) IN ACCORDANCE WITH FEDERAL LAW, TO PROVIDE FOR NOTIFICATION OF CHANGES REGARDING THE INFORMATION AND TO PROVIDE FOR THE UPDATE, CORRECTION, MODIFICATION OR REMOVAL OF THE INFORMATION FROM THE NICS DATABASE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 3, Title 66, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 66-356, Idaho Code, and to read as follows:

66-356. RELIEF FROM FIREARMS DISABILITIES. (1) A court that:

- (a) Orders commitment pursuant to section 66-329, Idaho Code;
- (b) Orders commitment or treatment pursuant to section 66-406, Idaho Code;
- (c) Appoints a guardian pursuant to section 66-322, Idaho Code, or section 15-5-304, Idaho Code;
- (d) Appoints a conservator pursuant to section 15-5-407(b), Idaho Code;
- (e) Appoints a guardian or conservator pursuant to section 66-404, Idaho Code; or
- (f) Finds a defendant incompetent to stand trial pursuant to section 18-212, Idaho Code, shall make a finding as to whether the subject of the proceeding is a person to whom the provisions of 18 U.S.C. 922(d)(4) and (g)(4) apply. If the court so finds, the clerk of the court shall forward a copy of the order to the Idaho state police, which in turn shall forward a copy to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database.

(2) A person who is subject to an order, including an appointment or finding described in subsection (1) of this section, may petition the

magistrate division of the court that issued such order, or the magistrate division of the district court of the county where the individual resides, to remove the person's firearms-related disabilities as provided in section 105(a) of P.L. 110-180. A copy of the petition for relief shall also be served on the director of the department of health and welfare and the prosecuting attorney of the county in which the original order, appointment or finding occurred, and such department and office may, as it deems appropriate, appear, support, object to and present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence, including evidence offered by the petitioner, concerning:

- (a) The circumstances of the original order, appointment or finding;
- (b) The petitioner's mental health and criminal history records, if any;
- (c) The petitioner's reputation; and
- (d) Changes in the petitioner's condition or circumstances relevant to the relief sought.

The court shall grant the petition for relief if it finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under this section no more than once every two (2) years.

(3) When a court issues an order granting a petition for relief under subsection (2) of this section, the clerk of the court shall immediately forward a copy of the order to the Idaho state police, which in turn shall immediately forward a copy to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database.

SECTION 2. That Section 67-3003, Idaho Code, be, and the same is hereby amended to read as follows:

67-3003. DUTIES OF THE DEPARTMENT. (1) The department shall establish a bureau of criminal identification to:

- (a) Serve as the state's central repository of criminal history records;
- (b) Conduct criminal background checks as authorized by law or rule and provide fingerprint identification services;
- (c) Obtain and electronically file information relating to in-state stolen vehicles and in-state wanted persons;
- (d) Establish and maintain an automated fingerprint identification system;
- (e) Establish a uniform crime reporting system for the periodic collection and reporting of crimes, and compile and publish statistics and other information on the nature and extent of crime in the state;
- (f) Maintain, pursuant to department rule, other identification information, which may include, but is not limited to, palm prints and photographs;
- (g) Cooperate with other criminal justice agencies of the state, state and federal courts, the criminal records repositories of other states, the federal bureau of investigation criminal justice information

1 services, the national law enforcement telecommunications system,
2 and other appropriate agencies and systems, in the operation of an
3 effective interstate and national system of criminal identification,
4 records and statistics; ~~and~~

5 (h) Develop and implement a training program to assist criminal jus-
6 tice agencies with the recordkeeping and reporting requirements of this
7 chapter; and

8 (i) Obtain and electronically transmit to the national instant crimi-
9 nal background check system (NICS), in accordance with federal law, in-
10 formation relating to eligibility to receive or possess a firearm pur-
11 suant to state or federal law. Upon notification to the department that
12 the basis for which any such information previously transmitted to the
13 NICS does not apply or no longer applies, the department shall, as soon
14 as practicable, notify the NICS of such change and shall update, cor-
15 rect, modify or remove such information from the NICS database.

16 (2) In accordance with chapter 52, title 67, Idaho Code, the department
17 may adopt rules necessary to implement the provisions of this chapter. Rules
18 relating to information maintained and reported by the court shall be made
19 after consultation with and approval by the Idaho supreme court.